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14

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/681,441	Applicant(s) FALL
	Examiner Luong	Art Unit 3682
		
<i>-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --</i>		
Period for Reply A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.		
<ul style="list-style-type: none"> - Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication. - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely. - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication. - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). - Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b). 		
Status		
1) <input checked="" type="checkbox"/> Responsive to communication(s) filed on <u>3/11/03</u>		
2a) <input checked="" type="checkbox"/> This action is FINAL. 2b) <input type="checkbox"/> This action is non-final.		
3) <input type="checkbox"/> Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under <i>Ex parte Quayle</i> , 1935 C.D. 11; 453 O.G. 213.		
Disposition of Claims		
4) <input checked="" type="checkbox"/> Claim(s) <u>1-3, 5, 6, and 8-20</u> is/are pending in the application.		
4a) Of the above, claim(s) _____ is/are withdrawn from consideration.		
5) <input type="checkbox"/> Claim(s) _____ is/are allowed.		
6) <input checked="" type="checkbox"/> Claim(s) <u>1-3, 5, 6, and 8-20</u> is/are rejected.		
7) <input type="checkbox"/> Claim(s) _____ is/are objected to.		
8) <input type="checkbox"/> Claims _____ are subject to restriction and/or election requirement.		
Application Papers		
9) <input checked="" type="checkbox"/> The specification is objected to by the Examiner.		
10) <input checked="" type="checkbox"/> The drawing(s) filed on <u>4/5/01</u> is/are a) <input type="checkbox"/> accepted or b) <input checked="" type="checkbox"/> objected to by the Examiner. Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).		
11) <input type="checkbox"/> The proposed drawing correction filed on _____ is: a) <input type="checkbox"/> approved b) <input type="checkbox"/> disapproved by the Examiner. If approved, corrected drawings are required in reply to this Office action.		
12) <input type="checkbox"/> The oath or declaration is objected to by the Examiner.		
Priority under 35 U.S.C. §§ 119 and 120		
13) <input checked="" type="checkbox"/> Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).		
a) <input checked="" type="checkbox"/> All b) <input type="checkbox"/> Some* c) <input type="checkbox"/> None of: 1. <input checked="" type="checkbox"/> Certified copies of the priority documents have been received. 2. <input type="checkbox"/> Certified copies of the priority documents have been received in Application No. _____. 3. <input type="checkbox"/> Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).		
<p>*See the attached detailed Office action for a list of the certified copies not received.</p>		
14) <input type="checkbox"/> Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e). a) <input type="checkbox"/> The translation of the foreign language provisional application has been received.		
15) <input type="checkbox"/> Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.		
Attachment(s)		
1) <input type="checkbox"/> Notice of References Cited (PTO-892)		
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)		
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____		
4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____		
5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)		
6) <input checked="" type="checkbox"/> Other: <i>Exhibit</i>		

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1. The Amendment filed on March 11, 2003 has been entered.
2. The restriction requirement on August 21, 2002 has been withdrawn in view of applicant's explicit admission that the two embodiments illustrated in the Figures are not patentably distinct in the Reply under 37 CFR 1.111 filed on October 15, 2002 (Paper No. 10).
3. The listing of references in the specification (page 1) is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609 A(1) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." Therefore, unless the references have been cited by the examiner on form PTO-892, they have not been considered.
4. The information disclosure statement filed April 5, 2001 which is incorporated into the specification (page 1) fails to comply with 37 CFR 1.98(a)(2), which requires a legible copy of each U.S. and foreign patent; each publication or that portion which caused it to be listed; and all other information or that portion which caused it to be listed. It has been placed in the application file, but the information referred to therein has not been considered.
5. The drawings are objected to because each part of the invention, such as, the telescoping member in claims 11-13 should be designated by a referential numeral or character. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.
6. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the claimed features such as the telescoping

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member in claims 11-13 must be shown or the features canceled from the claims. No new matter should be entered.

7. The disclosure is objected to because of the following informalities: each part of the invention, such as, the telescoping member in claims 11-13 should be designated by a referential numeral or character. Appropriate correction is required.

8. Claims 9-20 are objected to because of the following informalities: the claims contain grammatical or typographical errors, e.g., "being" in line 2 of claim 9 should have been "is" and "a support 5" in line 2 of claim 18 should have been "a support (5)." Appropriate correction is required.

9. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

10. Claims 11-13 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Claims 11-13 call for a telescoping member. However, the drawings do not show the telescoping member. It is unclear as to how applicant makes/uses the claimed telescoping member and connected it to claimed pedal arrangement.

11. Claims 1-3, 5, 6, and 8-20 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

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No antecedent basis is seen for the terms, e.g., “the respective arms” (plural, emphasis) in claim 1, and “the two arms” (plural, emphasis) in the last line of claim 1 and claim 20.

It is unclear:

(a) whether a confusing variety of terms, such as, (1) “at least one pedal arm” and “the respective arms” in claim 1 refer to the same or different things. See MPEP 608.01(o) and 2173.05(o). Applicant is respectfully urged to identify each claimed element with reference to the drawings; and

(b) which structure(s) define(s) the claimed element, such as, “an element” in line 10 of claim 1. Applicant is respectfully urged to identify each claimed element with reference to the drawings.

The term, such as, “*connectable*” in claim 18 is vague and indefinite in the sense that things which may be done are not required to be done, e.g., the motion-transmitting element is *connectable*, but is not required structurally to be connected between the pedal arm and the lever arm of the pedal actuated operating device. See “*crimpable*” and “*discardable*” in *Mathis v. Hydro Air Industries*, 1 USPQ2d 1513, 1527 (D.C. Calif. 1986); “*removable*” in *In re Burke Inc.*, 22 USPQ2d 1368, 1372 (D.C. Calif. 1992), and “*comparable*” in *Ex parte Anderson*, 21 USPQ2d 1241, 1249 (BPAI 1992).

12. Claims 1-3, 5, 8-12, 14, 16, and 17, as best understood, are rejected under 35 U.S.C. 102(b) as anticipated by Bayer (German OS No. 31 40329 A1 cited by applicant).

Regarding claim 1, Bayer teaches a pedal arrangement in a vehicle cab, said arrangement comprising:

a support 26 fixed in the cab (Fig. 2);

at least one pedal arm 22 having two ends (at 18 and 22 in Fig. 1), wherein the pedal arm 22 is journaled in the support 26 for pivoting about a pivot axis 24 spaced between the two ends of the pedal arm 22;

a foot plate (unnumbered, see Exhibit attached) fixed to a first portion (at 22 in Fig. 1) of the pedal arm 22 on one side of the pivot axis;

a motion-transmitting element 10 wherein the motion-transmitting element 10 is joined firstly to a second portion 18 of the pedal arm 22 on the other side of the pivot axis 24 from the foot plate and wherein the motion-transmitting element 10 is joined secondly to a pivotally mounted lever 4 that is configured so that pivotation thereof actuates an operating device 2 fixed to an element spaced from the support 26; and

wherein the motion-transmitting element 10 is disposed so that the distance between the motion-transmitting element's attachment points (see Exhibit) to the respective arms (18 and 4) is maintained at least substantially constant when there is a tensile force on the element 10 (i.e., when the foot plate is moved downwardly as shown by solid line position in Fig. 1) and is allowed to be shortened when there is compressive force on the element 10 (i.e., when the foot plate is moved upwardly as shown in dashed line position in Fig. 1); and

wherein the motion-transmitting element 10 is rigidly fixed to at least one of the pedal arm 22 and the lever 4, and is pivotally joined to the other of the two arms (18 and 4).

Claim 1 and other claims below are anticipated by Bayer. On the one hand, Bayer teaches each claimed element and its functional statement. On the other hand, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the

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prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963). On the other hand, it is well established that: (a) a claim containing a “recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus” if the prior art teaches all the structural limitations of the claims. *Ex parte Masham*, 2 USPQ2d 1647 (BPAI 1987); and (b) the functional limitations of a claim may not be given patentable weight where those limitations are inherent in a prior art reference. *In re Schreiber*, 44 USPQ2d 1429 (CAFC 1997).

Regarding claim 2, the motion-transmitting element is an elongated flexible element 10.

Regarding claim 3, the motion-transmitting element is a metal cable 10.

Regarding claim 5, the motion-transmitting element 10 is rigidly fixed both to the pedal arm 22 and to the lever 4.

Regarding claim 8, Bayer teaches a brake pedal arrangement in a vehicle, said arrangement comprising:

a brake pedal arm 22 pivotally connected to the vehicle at a pivot point 24 located on the brake pedal arm 22, the pivot point 24 being positioned between an upper end 18 and a lower end (at 22 in Fig. 1) of the brake pedal arm 22; and

a motion-transmitting element 10 connected between the brake pedal arm 22 and a pedal actuated operating device 4, 2, the motion-transmitting element 10 supporting tensile forces

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imposed thereupon (i.e., when the foot plate is moved downwardly as shown by solid line position in Fig. 1), and collapsing under compressive forces imposed thereupon (i.e., when the foot plate is moved upwardly as shown in dashed line position in Fig. 1).

Regarding claim 9, the motion-transmitting element is a cable 10.

Regarding claim 10, the motion-transmitting element is a bendable member 10.

Regarding claim 11, the motion-transmitting element 10 is a telescoping member since the element 10 is slid back and forth (telescope) within another element, i.e., a conduit 12.

Regarding claim 12, the telescoping member 10 is pivotally connected to the brake pedal arm 22.

Regarding claim 14, the motion-transmitting element 10 is fixed at least at one end thereof between the brake pedal arm 22 and the pedal actuated operating device 2, 4.

Regarding claim 16, the motion-transmitting element 10 is pivotally connected at least at one end thereof between the brake pedal arm 22 and the pedal actuated operating device 2, 4.

Regarding claim 17, the pedal actuated operating device is a pressure actuated servo unit 2 for affecting brake pressure application.

13. Claims 1, 2, 5, 6, 8, 10, 14, and 16-20, as best understood, are rejected under 35 U.S.C. 102(b) as being anticipated by Wolpert (German Patent No. DE 107 06 692 C1 cited by applicant).

Regarding claim 1, Wolpert teaches a pedal arrangement in a vehicle cab 2, 5, said arrangement comprising:

a support 11 fixed in the cab 2, 5 (Fig. 2);

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at least one pedal arm 8, 20 having two ends 8 and 10, wherein the pedal arm 8, 20 is journaled in the support 11 for pivoting about a pivot axis 13 spaced between the two ends 8 and 20 of the pedal arm 8, 20;

a foot plate (unnumbered) fixed to a first portion 8 of the pedal arm 8, 20 on one side of the pivot axis 13;

a motion-transmitting element 14 wherein the motion-transmitting element 14 is joined firstly to a second portion 20 of the pedal arm 8, 20 on the other side of the pivot axis 13 from the foot plate and wherein the motion-transmitting element 14 is joined secondly to a pivotally mounted lever 15 that is configured so that pivotation thereof actuates an operating device 10 fixed to an element 3 spaced from the support 11; and

wherein the motion-transmitting element 14 is disposed so that the distance between the motion-transmitting element's attachment points (Fig. 2) to the respective arms (15 and 20, 8) is maintained at least substantially constant when there is a tensile force on the element 14 (i.e., when the foot plate is moved downwardly as shown by dashed line position in Fig. 2) and is allowed to be shortened when there is compressive force on the element 14 (i.e., when the foot plate is moved upwardly as shown in solid line position in Fig. 2); and

wherein the motion-transmitting element 14 is rigidly fixed to at least one of the pedal arm 20, 8 and the lever 15, and is pivotally joined to the other of the two arms.

Claim 1 and other claims below are anticipated by Wolpert. On the one hand, Wolpert teaches each claimed element and its functional statement. On the other hand, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed

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invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey* and *In re Otto, supra*. On the other hand, it is well established that:

- (a) a claim containing a “recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus” if the prior art teaches all the structural limitations of the claims. *Ex parte Masham, supra*.

Regarding claim 2, the motion-transmitting element is an elongated flexible element 14. The element 14 of Wolpert is inherently *flexible* since virtually anything will be flexed if enough pressure is applied to it. See the term “flexibility” in *Fredman v. Harris-Hub Co., Inc.*, 163 USPQ 397 (DC 1969).

Regarding claim 5, the motion-transmitting element 14 is rigidly fixed both to the pedal arm 20, 8 and to the lever 15.

Regarding claim 6, the lever 15 is joined to a rocker arm 16, which, when the lever 15 is pivoted, acts on an actuator rod 17 for a brake servo unit 10, which is located on the outside of an intermediate wall 4 on the inside of which the support 11 is located spaced from the intermediate wall 4 (Figs. 1 and 2).

Regarding claim 8, Wolpert teaches a brake pedal arrangement in a vehicle 2, 5, said arrangement comprising:

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a brake pedal arm 20, 8 pivotally connected to the vehicle 2, 5 at a pivot point 13 located on the brake pedal arm 20, 8, the pivot point 13 being positioned between an upper end 20 and a lower end 8 of the brake pedal arm 20, 8; and

a motion-transmitting element 14 connected between the brake pedal arm 20, 8 and a pedal actuated operating device 10, 12, etc., the motion-transmitting element 14 supporting tensile forces imposed thereupon (i.e., when the foot plate is moved downwardly as shown by dashed line position in Fig. 2), and collapsing under compressive forces imposed thereupon (i.e., when the foot plate is moved upwardly as shown in solid line position in Fig. 2).

Regarding claim 10, the motion-transmitting element is a bendable member 14. The element 14 of Wolpert is inherently *bendable* since virtually anything will be bent if enough pressure is applied to it. See the term “flexibility” in *Fredman v. Harris-Hub Co., Inc., supra*.

Regarding claim 14, the motion-transmitting element 14 is fixed at least at one end thereof between the brake pedal arm 20, 8 and the pedal actuated operating device 10, 12, etc.

Regarding claim 16, the motion-transmitting element 14 is pivotally connected at least at one end thereof between the brake pedal arm 20, 8 and the pedal actuated operating device 10, 12, etc.

Regarding claim 17, the pedal actuated operating device is a pressure actuated servo unit 10 for affecting brake pressure application.

Regarding claim 18, Wolpert teaches a pedal arrangement for a vehicle cab 2, 5, said arrangement comprising:

a pivot axis 13 connected to a support 11 fixed to the vehicle cab 2, 5;

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a pedal arm 8, 20 arranged to be pivotally connected to the pivot axis 13 at a pivot point 13 located on the pedal arm 8, 20, the pivot point 13 being positioned between an upper end and a lower end of the pedal arm 8, 20;

a pedal actuated operating device 10, 12, etc. including a bracket 12 fixed to the vehicle cab 2, 5, a rocker arm 16 journaled in the bracket 12 (at 19 in Fig. 2) and a lever arm 15 connected to the rocker arm 16; and a motion-transmitting element 14 connectable between the pedal arm 8, 20 and the lever arm 15 of the pedal actuated operating device 10, 12, etc., wherein the motion-transmitting element 14 supports tensile forces imposed upon the motion-transmitting element 14, and wherein the motion-transmitting element 14 collapses under compressive forces imposed upon the motion transmitting element 14.

Regarding claim 19, the motion transmitting element 14 is a bendable member 14.

Regarding claim 20, the motion transmitting element 14 is rigidly fixed to at least one of the pedal arm 8, 20 and the lever arm 15, and is pivotally joined to the other of the two arms.

14. Claims 13 and 15, as best understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over Bayer.

Bayer teaches applicant's embodiment in Fig. 1. Applicant explicitly admits that applicant's embodiment of Fig. 1 and applicant's embodiment of Fig. 2 are not patentably distinct in Paper No. 10.

10. In addition, claims 13 and 15 are drawn to applicant's embodiment of Fig. 1.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to weld at least one end of the telescoping member (motion transmitting element) of Bayer to the brake pedal arm as explicitly admitted by the applicant that applicant's welding embodiment of

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Fig. 1 is an obvious variant of applicant's embodiment of Fig. 2. See fifth paragraph on page 2 of the restriction on August 21, 2002, *In re Lee*, 199 USPQ 108 (Comm'r Pat. 1978), MPEP 803, and *Anything You Say Can Be Used Against You*, Lance Leonard Barry, May 2000, JPTOS, Volume 82, No. 5, page 347.

15. Claim 15, as best understood, is rejected under 35 U.S.C. 103(a) as being unpatentable over Wolpert.

Wolpert teaches applicant's embodiment in Fig. 1. Applicant explicitly admits that applicant's embodiment of Fig. 1 and applicant's embodiment of Fig. 2 are not patentably distinct in Paper No. 10. In addition, claims 13 and 15 are drawn to applicant's embodiment of Fig. 1.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to weld at least one end of the motion transmitting element 14 of Wolpert to the brake pedal arm as explicitly admitted by the applicant that applicant's welding embodiment of Fig. 1 is an obvious variant of applicant's embodiment of Fig. 2. See fifth paragraph on page 2 of the restriction on August 21, 2002, *In re Lee*, MPEP 803, and *Anything You Say Can Be Used Against You, supra*.

16. Applicant's arguments filed March 11, 2003 have been fully considered but they are not persuasive.

OBJECTION TO THE SPECIFICATION AND DRAWINGS

Applicant asserts that the present specification, and in particular the drawings comply with the requirement of 35 USC 112 and 37 CFR 1.83.

First, the examiner respectfully submits that 37 CFR 1.83 states that the drawings *must* show every feature of the invention specified in the claims. In the instant case, applicant's claims 11-13 call

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for the telescoping member. However, Figs. 1 and 2 do not show the telescoping member and the specification (page 4) does not describe as to how the telescoping element is pivotally connected to the pedal and lever. Therefore, applicant's drawings fail to comply with the requirement of 37 CFR 1.83 and applicant's specification does not satisfy the requirement under 35 USC 112.

Second, applicant contended that a person of ordinary skill in the art would know what is being referred to in both the claims and the specification regarding the claimed telescoping member.

The CAFC in *Lockwood v. American Airlines Inc.*, 41 USPQ2d 1961 (CAFC 1997) and *Martin v. Mayer*, 3 USPQ2d 1333, 1337 (CAFC 1987) has emphasized that the issue is not whether one skilled in the art would have been able to make the telescoping member using knowledge of the art, but rather did applicant's application sufficiently describe as to how appellant makes/uses the claimed telescoping member. Section 112 does not require that the specification contains that which is known to those skilled in the art, but it does require specificity as to the claimed limitations. It is “*not* a question of whether one skilled in the art *might* be able to construct the patentee’s device from the teachings of the disclosure . . . Rather, it is a question whether the application necessarily discloses that particular device.” *Jepson v. Coleman*, 136 USPQ 647, 649-50 (CCPA 1963)(emphasis in original).

In the instant case, claims 11-13 expressly call for the telescoping member, *a fortiori*, the application necessarily discloses that particular device.

35 USC 112, FIRST PARAGRAPH

The examiner fully agrees with the legal precedents cited by applicant, such as, *Lockwood*, *Atmel Corp.*, MPEP 2163.03, and *Wertheim*. The examiner is mindful that each case is dependent

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upon its own facts. In the case at hand, applicant conclusorily stated that the flexible rod 12, preferable a cable, can be interchanged with a telescoping element. Nevertheless, applicant failed to disclose as to "how" the telescoping element is replaced the rod or cable 12 in Figs. 1 and 2 such that the distance between the telescoping element's attachment points to the respective arms is maintained *at least substantially constant as claimed*. To the contrary, common knowledge or common sense teaches that the length of the telescoping element is varied. Therefore, the distance between the telescoping element's attachment points to the respective arms is *substantially variable*. Put in another fashion, applicant's claimed device would be inoperative for its intended design if one replaces applicant's rod or cable by the telescoping member.

For the reason stated above, the rejection under 35 USC 112, first paragraph, is maintained.

35 USC 112, SECOND PARAGRAPH

The examiner further agrees with applicant's citations, such as, *Seattle Box Co., Orthokinetics, Inc., W.L. Gore & Associates, Inc.*, and MPEP 2173.05(b). Therefore, the rejection based on relative terms, such as, "substantially" and "rigidity" is withdrawn. Similarly, applicant avers that the term "bendable" would be known to one of skill in the art, thus, the rejection of the term "bendable" is withdrawn. However, applicant did not explain as to why the term "connectable" is definite, consequently, the rejection of the term "connectable" is reiterated.

FIRST REJECTION UNDER 35 USC 102

The examiner does not dispute the legal precedents cited by applicant. However, it is unclear as to how applicant's cited precedents support the factual findings in the instant case. Applicant asserted that:

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“With regard to the Bayer reference, Fig. 1 clearly shows that the cable 10 is pivotably joined at one end to the lever 18. The cable joint at the opposite end is only schematically illustrated, but there is no reason why a person skilled in the art should not take it for granted that also the joint between the cable and the lever 4 is pivotable because there is no indication or suggestion to the contrary. Further, one of skill in the art should appreciate that it is common practice to arrange pivotable joints at both ends of a control cable of the type shown in the Bayer reference.”

The applicant's above assertions explicitly admits that Bayer's motion-transmitting element 10 is joined firstly to a second portion of the pedal arm 22 and secondly to the pivotally mounted lever 14 as claimed. There is a reason why a person skilled in the art should take it for granted that the joint between the cable and the lever 4 is also pivotable because Fig. 1 of Bayer indicates so. In fact, Bayer's lever 4 is pivoted by swinging back and forth at the pivot point 8 in order to engage and disengage the operating device 2. It is well-settled law that an anticipatory reference needs not duplicate word for word what is in the claims. Anticipation can occur when a claimed limitation is “inherent” or otherwise implicit in the relevant reference. *Standard Havens Products Inc. v. Gencor Industries Inc.*, 21 USPQ2d 1321, 1328 (CAFC 1991).

SECOND REJECTION UNDER 35 USC 102

The rejection based on Jean is withdrawn in view of applicant's amendments in claims 1 and 6. Applicant's remarks about Jean are deemed to be moot.

FIRST REJECTION UNDER 35 USC 103

The examiner does not dispute the holdings of numerous legal precedents cited. Applicant further asserted that there is no suggestion or teaching of the welded telescoping member. However, applicant apparently overlooked applicant's own admission that applicant's embodiment of Fig. 2 is

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an obvious variant of applicant's embodiment of Fig. 1. The Office restriction on August 21, 2002 expressly notified applicant that:

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, *if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.*

In the case *sub judice*, the examiner finds one of the inventions (i.e., applicant's embodiment of Fig. 2) is unpatentable over the prior art Bayer, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention (i.e., applicant's embodiment of Fig. 1).

Applicant contended that nowhere in Bayer reference is there any indication that a telescoping rod may be used. Contrary to applicant's subjective observation, Bayer's Fig. 1 shows the cable core 10 sliding within the conduit 12, therefore, the cable core 10 and conduit 12 form a telescoping member. There is a reason why a person skilled in the art should take it for granted that the joint between the cable and the lever 4 is also pivotable because Fig. 1 of Bayer indicates so. In fact, Bayer's lever 4 is pivoted by swinging back and forth at the pivot point 8 in order to engage and disengage the operating device 2. *Standard Havens Products Inc. v. Gencor Industries Inc., supra.*

For the reasons set forth above, the rejection under 35 USC 103 based on Bayer is maintained.

SECOND REJECTION UNDER 35 USC 103

The rejection based on Jean is withdrawn in view of applicant's amendments in claims 1 and

6. Applicant's remarks about Jean are deemed to be moot.

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17. Applicant's arguments with respect to claims 1-3, 5, 6, and 8-20 have been considered but are moot in view of the new ground(s) of rejection.

18. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

19. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Luong whose telephone number is (703) 308-3221. The examiner can normally be reached on Monday-Thursday from 8:30 AM EST to 7:00 PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Bucci, can be reached on (703) 308-3668. The fax phone number for this Group is (703) 305-7687. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-1113.

Luong

June 2, 2003



Vinh T. Luong
Primary Examiner

Nummer:
Int. Cl.³:
Anmeldetag:
Offenlegungstag:

3140329
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